

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 795 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

DEVENDRA SHIVALAL JANI

Versus

DISTRICT MAGISTRATE

Appearance:

MR YOGESH S LAKHANI for Petitioner
MR KT DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 05/04/2000

ORAL JUDGEMENT

#. District Magistrate, Rajkot, passed an order on July 26, 1999, in exercise of powers under section 3 (1) of Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining the petitioner Devendra Shivilal Jani, under the provisions of the PASA Act. The

detaining authority, after taking into consideration the statements of anonymous witnesses and three offences registered against the detenu, came to a conclusion that the detenu is a "dangerous person" and that his activities are detrimental to public order. The authority took into consideration the possibility of resorting to less drastic remedies but came to a conclusion that the proceedings may take time as against the need for immediately preventing the petitioner from pursuing his illegal and anti-social activities and therefore, he is required to be detained under the PASA Act.

#. The detenu has challenged the order of detention on various grounds. The main grounds are that the offences registered against the detenu do not indicate any disturbance to public order. The detaining authority has not verified the correctness and genuineness of the incidents narrated by the anonymous witnesses and the fear expressed by them qua the detenu. The exercise of privilege under section 9(2) of the PASA Act by the detaining authority, therefore, is improper. This improper exercise of privilege by the detaining authority has affected the right of the detaining of making an effective representation guaranteed under Article 22 (5) of the Constitution of India. The order of detention, therefore, would stand vitiated. The same may be quashed and the petition may be allowed. Mr. Gondaliya, learned advocate appearing for the advocate for the petitioner has reiterated the above grounds. He has taken this Court through the compilation of the documents received by the detenu from the detaining authority along with the grounds of detention which he has produced on record. His emphasis is on the fact that the papers relating to the three registered offences, if perused, do not indicate any disturbance to public order and therefore, they as grounds would not be available to the detaining authority. As regards the statements of anonymous witnesses, he submitted that the statements have not been verified by the detaining authority himself but they are verified by the Dy.S.P. only. He, therefore, urged that the subjective satisfaction cannot be said to have been arrived at genuinely by the detaining authority. This would vitiate the exercise of powers under section 9 (2) of the PASA Act and ultimately, the right of the detenu of making an effective representation. He therefore urged that none of the grounds survives to indicate the need for detaining the petitioner due to alleged anti-social activities detrimental to public order. The petition, may therefore, be allowed.

#. Mr. K.T. Dave, learned AGP has opposed this petition vehemently. He submitted that the detaining authority has relied on the verification by the Dy.S.P. who is a responsible officer of high rank. The petitioner is booked for three offences, two of which are of highway robbery and one of theft of vehicle. His activities are, therefore, dangerous in nature. The Court therefore, may not show any indulgence and may dismiss the petition.

#. Considering the rival side contentions, at the outset, it may be noted that the petitioner is ordered to be detained by the detaining authority on the ground that his activities are that of dangerous person and that they are detrimental to public order and therefore, he is required to be detained under the PASA Act in order to immediately prevent the petitioner from pursuing his activities. In this light, if the papers relating to detention are seen, it is evident that in none of the offences registered against the detenu can it be said by any stretch of imagination that public order was disturbed. Two incidents of highway robbery have taken place at midnight against the individuals and there were no witnesses. The third incident is of theft and the incident of theft came to be known to the first informant only in the morning on the next day and therefore, none of the incidents indicate any disturbance to public order.

4.1 So far as the statements of witnesses are concerned, they cannot be accepted to indicate disturbance to public order as the detaining authority also could not have relied upon it for the reason that the detaining authority himself has not verified these statements on the question of correctness and genuineness of the incidents stated by the witnesses and the fear expressed by the witnesses. The detaining authority exercised the powers under section 9(2) of the PASA Act only on the basis of verification by Dy.S.P. This exercise of powers under section 9(2) is, therefore, improper and has affected the right of the detenu of making an effective representation as envisaged under Article 22 (5) of the Constitution of India.

#. The resultant effect of the above discussion is that the order of detention is passed on the basis of the satisfaction recorded by the detaining authority that the activities of the detenu are that of a dangerous person and they are detrimental to public order. But the same is not borne out from the material relating to the order of detention. The satisfaction, therefore, cannot be

considered to be genuine. The petition, therefore, deserves to be allowed on this ground.

#. The petition is allowed. The impugned order of detention dated July 26, 1999 is hereby quashed and set aside. The detenu - Devendra Shivlal Jani is hereby ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no order as to costs.

[A.L. DAVE, J.]

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